

**BOARD RESOLUTION ADOPTING THE COMPLIANCE REVIEW REPORT AND
FINDINGS BY THE SPB COMPLIANCE REVIEW UNIT OF
THE CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS**

WHEREAS, the State Personnel Board (SPB or Board) at its duly noticed meeting of March 3, 2014, carefully reviewed and considered the attached Compliance Review Report of the California Department of Industrial Relations submitted by SPB's Compliance Review Unit.

WHEREAS, the Report was prepared following a baseline review of the California Department of Industrial Relations' personnel practices. It details the background, scope, and methodology of the review, and the findings and recommendations.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby adopts the Report, including all findings and recommendations contained therein. A true copy of the Report shall be attached to this Board Resolution and the adoption of the Board Resolution shall be reflected in the record of the meeting and the Board's minutes.


SUZANNE M. AMBROSE
Executive Officer

COMPLIANCE REVIEW REPORT DEPARTMENT OF INDUSTRIAL RELATIONS FINDINGS AND RECOMMENDATIONS MARCH 3, 2014

Examinations

During the period under review, the Department of Industrial Relations (DIR) conducted eight examinations. The SPB reviewed five of those examinations, which are listed below:

Classification	Examination Type	Examination Components	Number of Eligibles
Assistant Safety Engineer	Open, Non-Promotional	QAP ¹	14
Senior Personnel Specialist	Departmental Promotional	QAP	7
District Manager, Division of Occupational Safety & Health	Departmental Promotional	QAP	7
Research Analyst I	Open, Spot	QAP	14
Workers Compensation Consultant	Departmental Promotional	QAP	6

FINDING NO. 1 – DIR Did Not Provide SPB with Job Analyses for Three QAP Examinations

The Merit Selection Manual (MSM), which is incorporated in California Code of Regulations, title 2, section 50, mandates the development and use of a job analysis for

¹ The Qualifications Appraisal Panel (QAP) interview is the oral component of an examination whereby competitors appear before a panel of two or more evaluators. Candidates are rated and ranked against one another based on an assessment of their ability to perform in a job classification.

the examination process. A "job analysis shall serve as the primary basis for demonstrating and documenting the job-relatedness of examination processes conducted for the establishment of eligible lists within the State's civil service." (MSM (Oct. 2003), § 2200, p. 2.) The MSM requires that job analyses adhere to the legal and professional standards outlined in the job analysis section of the MSM, and that certain elements must be included in the job analysis studies. (*Ibid.*) Those requirements include the following: (1) that the job analysis be performed for the job for which the subsequent selection procedure is developed and used; (2) the methodology utilized be described and documented; (3) the job analytic data be collected from a variety of current sources; (4) job tasks be specified in terms of importance or criticality, and their frequency of performance; (5) and job tasks must be sufficiently detailed to derive the requisite knowledge, skills, abilities (KSAs), and personal characteristics that are required to perform the essential tasks and functions of the job classification. (MSM, § 2200, pp. 2-3.)

DIR was unable to provide job analyses for the following examinations: District Manager for the Division of Occupational Safety and Health, Senior Personnel Specialist; and Workers Compensation Consultant. Consequently, the SPB was unable to determine if the examinations were developed utilizing job related examination processes which are required by the MSM.

Classification	List Active Date	List Expiration Date	Number of Eligibles	Number of FTE Vacant Positions as of 11/29/13
Senior Personnel Specialist	11/13/2011	10/12/2015	7	0
District Manager, Division of Occupational Safety & Health	06/08/2012	06/07/2016	7	0
Workers Compensation Consultant	11/15/2011	05/22/2013	6	29

To correct this deficiency, DIR must abolish the examination lists that have not yet expired for the following classifications:

- (1) Senior Personnel Specialist;
- (2) District Manager for the Division of Occupational Safety and Health.

Within 15 days of the Board's Resolution adopting these findings and recommendations, DIR must submit to the SPB a written report of compliance verifying that the above-stated examination lists have been abolished. Furthermore, the Compliance Review Division (CRD) finds the appointments that were made from the examinations that were administered without a Job Analysis were made in good faith, are over a year old and did not merit being voided. In the future, DIR must have a job analysis for each examination that they conduct. Within 60 days of the Board's Resolution adopting these findings and recommendations, DIR must submit to the SPB a corrective action plan to ensure that each examination is based on job related examination processes which includes developing and utilizing a job analysis.

Appointments

During the compliance review period, the DIR made 122 appointments. The SPB reviewed 31 of these appointments, which are listed below:

Classification	Appointment Type	Number of Appointments
Senior Safety Engineer (Industrial)	Transfer	1
Workers' Compensation Assistant	Transfer	1
Workers' Compensation Judge	Transfer	1
Student Assistant	Transfer	1
Deputy Labor Commissioner I	Transfer	1
Senior Information Systems Analyst (Specialist)	Transfer	1
Auditor I	Transfer	1
Associate Programmer Analyst (Specialist)	Transfer	1
Assistant Safety Engineer I	Transfer	1
District Manager, Division of Occupational Safety and	Transfer	1

Health		
Staff Services Analyst (General)	Certification List	1
Workers' Compensation Judge	Certification List	5
Industrial Relations Representative	Certification List	1
Labor Relations Specialist	Certification List	1
Office Technician (Typing)	Certification List	3
Office Assistant	Certification List	1
Information Systems Technician	Certification List	1
Executive Assistant	Certification List	1
Staff Information Systems Analyst (Specialist)	Certification List	1
Workers' Compensation Consultant	Certification List	1
Staff Services Manager I	Mandatory Reinstatement	1
Workers' Compensation Compliance Officer	Mandatory Reinstatement	1
Legal Support Supervisor I	Mandatory Reinstatement	1
Staff Services Manager III	Permissive Reinstatement	1
Associate Governmental Program Analyst	Permissive Reinstatement	1

FINDING NO. 2 – DIR Properly Complied with Civil Service Laws and Board Rules for All Appointments Made During the Compliance Review Period

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050). Except as provided by law, appointments to vacant positions shall be made from employment lists. (*Ibid.*) Appointments made from eligible lists, by way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness, which requires consideration of each individual's job-related qualifications for a position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

DIR measured each applicant's ability to perform the duties of the job by conducting hiring interviews and selecting the best suited candidates.

DIR made appointments to 10 positions by way of transfer of employees from other agencies. DIR verified the transfer eligibility of each candidate to the appointed class, and thus complied with civil service laws and Board rules in making those appointments. (Cal Code Reg., tit. 2, § 425.).

For each of the 16 list appointments, DIR ordered a certification list of candidates ranked competitively. After clearing the SROA² list, the selected candidates were appointed based on eligibility by being reachable within the first three ranks of the certification list. Accordingly, these appointments complied with civil service laws and Board rules.

Regarding appointments that are mandatory reinstatements, a state agency or department is required to reinstate an employee to his or her former position if the employee is (1) terminated from a temporary or limited-term appointment by either the employee or the appointment power; (2) rejected during probation; or (3) demoted from a managerial position. (Gov. Code, § 19140.5.) However, the following conditions must apply: the employee accepted the appointment without a break in continuity of service and the reinstatement is requested within 10 working days after the effective date of the termination. (*Ibid.*)

The three employees who were appointed as mandatory reinstatements to DIR accepted the appointments without a break in the continuity of their state service and requested reinstatement within 10 working days after the effective date of the termination of the other position. Thus, these appointments were made in compliance with civil service laws and Board rules.

The two permissive reinstatement appointments made by DIR complied with civil service laws and Board rules regarding an appointing power's discretion to reinstate any person having probationary or permanent status who was separated from his or her position by resignation. (Gov. Code, § 19140, subd. (a).)

² The State Restriction of Appointments (SROA) Program is intended to prevent the layoff and separation of skilled and experienced employees from State service. The SROA Program assists in placing affected employees by temporarily restricting the methods of appointment available to appointing powers. Employees on SROA lists are granted preferential consideration over all other types of appointments except appointments from reemployment lists and mandatory reinstatements.

The SPB thus found that all the appointments DIR made during the compliance review period satisfied civil service laws and Board rules.

DEPARTMENTAL RESPONSE

DIR was provided with a copy of the initial findings and recommendations report to review. A copy of DIR's response is attached as Attachment 1.

SPB REPLY

Based on its written response, DIR will abolish the eligibility lists for Senior Personnel Specialist and District Manager for the Division of Occupational Safety and Health. The Worker's Compensation Consultant eligibility list expired on May 22, 2013. In addition, DIR will conduct a job analysis for all classifications for which an examination may be administered.

It is recommended that DIR comply with the afore-stated recommendations within 60 days of the Board's Resolution and submit to the SPB a written report of compliance.

The SPB appreciates the professionalism and cooperation of DIR during the compliance review.

Attachment No. 1**STATE OF CALIFORNIA****EDMUND G. BROWN JR., Governor****DEPARTMENT OF INDUSTRIAL RELATIONS****Director Christine Baker****1515 Clay Street, 17th Floor****Oakland, CA 94612****Tel: (510) 622-3939 Fax: (510) 622-3265****MAILING ADDRESS:****P O Box 420603****San Francisco, CA 94142-0603****February 14, 2014****State Personnel Board
Compliance Review Board
Attn: Lori Gillihan
801 Capitol Mall
Sacramento, CA 95814****RE: FY 2012/13 Compliance Review Report****Dear Ms. Gillihan:**

Thank you for the opportunity to provide comments on the Compliance Review Report for the Department of Industrial Relations (DIR) findings and recommendations. DIR is submitting this written response to the State Personnel Board's (SPB) draft dated March 3, 2014.

DIR concurs with the findings and recommendation provided by your report. Detailed below are the corrective measures to be implemented no later than March 17, 2014.

Finding No. 1 - DIR Did Not Provide SPB with Job Analyses for Three QAP Examinations

Corrective Measures - DIR will abolish the following eligibility lists within 15 days of the Board's Resolution adopting these findings and recommendations. Notices will be sent to all candidates regarding the abolishment of the eligibility lists:

- *Senior Personnel Specialist*
- *District Manager for the Division of Occupational Safety and Health*
- *Workers Compensation Consultant (no longer valid, as it expired as of May 22, 2013)*

Furthermore, DIR will conduct Job Analysis for all classification for which an examination may be administered. DIR will schedule examinations, whether Promotional or Open only after a completed job analysis is conducted.

Finding No. 2 - DIR Properly Complied with Civil Service laws and Board Rules for All Appointments Made During the Compliance Review Period

DIR agrees with Finding No. 2 and will continue to follow civil service laws and Board rules, when making all appointments.

Thank you for the opportunity to respond to the Compliance Review Report. Should you have any questions regarding this response, please contact Rita Anderson, Chief of Human Resources, at 415-703-4389 or Randerson@dir.ca.gov.

*Sincerely,*A handwritten signature in cursive script that reads 'Christine Baker'.
**Christine Baker,
Director**

cc: Han Ha, Chief of Administration
Rita Anderson, Chief of Human Resources